

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

HEIDI WEITZ,

Plaintiff,

vs.

THE PRIMM VALLEY CASINO  
RESORTS HEALTH CARE PLAN, an  
employee welfare benefit plan,

Defendant.

2:10-CV-00094-PMP-LRL

**ORDER**

This action was removed to this Court on January 21, 2010, (Doc. #1). Following completion of discovery, Defendant Primm Valley Casino filed a Motion for Summary Judgment (Doc. #25) on February 17, 2011. Plaintiff failed to file a timely response to Defendant's Motion for Summary Judgment, and on March 18, 2011, the Court entered an Order (Doc. #26) granting Defendant's Motion for Summary Judgment.

On April 29, 2011, Plaintiff filed a Motion to Set Aside Judgment (Doc. #28) and a Motion for Leave to File a Late Opposition to Defendant's Motion for Summary Judgment (Doc. #29). Plaintiff's motions for relief from judgment are fully briefed, and the Court finds it appropriate to grant Defendant's Motion for Relief to File a Sur-Reply (Doc. #32).

Having read and considered the matters addressed regarding Plaintiff's motions for relief from Judgment, the Court is hard pressed to find neglect on the

1 part of Plaintiff which is excusable and which would warrant relief under Rule 60(b)  
2 of the Federal Rules of Civil Procedure. Nonetheless, the Court concludes that its  
3 discretion should be exercised in favor of adjudication of Defendant's motion for  
4 summary on its merits rather than on the basis of a procedural default and the  
5 negligent failure of Plaintiff's counsel to timely seek relief from the Court regarding  
6 established deadlines calling for Plaintiff's response to Defendant's Motion for  
7 Summary Judgment.

8 **IT IS THEREFORE ORDERED** that Plaintiff's Motion to Set Aside  
9 Judgment (Doc. # 28), Plaintiff's Motion for Leave to File a Late Opposition to  
10 Defendant's Motion for Summary Judgment (Doc. #29) are **GRANTED**.

11 **IT IS FURTHER ORDERED** that Defendant's Motion for Leave to File  
12 Sur-Reply (Doc. #32) is **GRANTED**.

13 **IT IS FURTHER ORDERED** that Plaintiff Heidi Weitz shall file her  
14 Response to Defendant's Motion for Summary Judgment (Doc. #25) not later than  
15 **June 23, 2011**. Defendant shall thereafter have to and including **July 8, 2011** within  
16 which to file a Reply Memorandum.

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18 DATED: June 14, 2011.

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21 PHILIP M. PRO  
22 United States District Judge  
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